IN THE HIGH COURT OF JUDICATURE AT BOMABY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.237 OF 2005

M/s. Maingi Maritime Consultant Pvt. Ltd.
....Petitioner.

Vs,

M/s. Sunder's Underwater Services Pvt. Ltd.
....Respondent.

Mr. Joseph i/by Joseph & Associates for the Petitioner.

Mr. A.M.Vernekar for the Respondent.

CORAM: A.M. KHANWILKAR,J.
DATED: 16.9.2005.

PC:

1. Heard counsel for the parties. Perused the pleadings. In my opinion, this petition will have to be dismissed on accepting the preliminary objection taken on behalf of the respondent company without going into the other issues on merits of the case as objection is regarding the improper service of statutory notice on the respondent company. The petitioner has approached this court with categoric assertion that the statutory notice was sent to the respondent company on its registered office at 401, Mamta House, S.V. Road, Bandra (W), Mumbai 400 050.. The respondent company on affidavit has stated that the registered office of the respondent company in the

record of the Registrar of the Companies, Maharashtra, Mumbai is 810, Tulsiani Chambers, 212, Nariman Point, Mumbai 400 021. This statement is supported by the extract from the record of the Registrar of Companies. The petitioner has not placed on record any material to counter this position. If it is so, the respondent has rightly pressed into service the decision of the Division Bench of this court in the case of N.L. Mehta Cinema Enterprises Pvt. Ltd. Vs. Pravinchandra P. Mehta reported in 1991 Vol.70 Company Cases Page 31. The Division Bench of this Court held that manner in which notice sent by the petitioner cannot be accepted as proper service. The counsel for the petitioner however, contends that, even though it is the case of improper service of notice, the petitioner can proceed against the respondent company by establishing the fact that the respondent is unable to pay its debt. This submission is however, of no avail.

2. The other contention pressed into service on behalf of the respondent is that the petitioner has already initiated action against the petitioner in the Joint Venture M/s.Seatrans Shipping Ltd., in Company Petition No.239/2005, which has been admitted by this court on 2.9.2005. Even that petition is based on the self-same claim set up in this petition. Therefore, the

petitioner cannot be permitted to pursue two actions in respect of the same claim.

3. In this view of the matter, this petition ought to fail. Hence, dismissed.

4. All questions regarding merits are left open including the petitioner to pursue any other remedy as may be permissible by law for recovery of the claim amount.

(A.M. KHANWILKAR, J.)